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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/767,819
Filing Date: January 22, 2001
Appellant(s): ZEIDMAN, ROBERT M.

Jim H. Salter
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/15/2009 appealing from the Office action mailed 02/04/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Berney, Kerri, "You Should Know Better, Mr. Spielberg", 25 February 1997, [online]
[retrieved on 2006-12-07] Retrieved from the Internet <URL:
<http://members.aol.com/harx1/sch lind.html>>

6,766,524	Matheny et al.	7-2004
7,103,904	Blackketter et al.	9-2006
6,075,971	Williams et al.	6-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the 1997 Broadcast of "Schindler's List" on NBC, in view of Matheny et al. (US Pat No 6,766,524), in further view of Blackketter et al. (US Pat No. 7,103,904) and further in view of Williams et al. (US Pat. No. 6,075,971).

In regard to claim 1, the 'You Should Know Better, Mr. Spielberg' article provides evidence that it is known in the art of television broadcasting to "allow content to be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Matheny et al. discloses a system and method to encourage viewers to pay attention to television programs (Col 2, Lines 38-42). The method comprises "receiving a broadcast with embedded information about the broadcast" (i.e. information associated with the received triggers) whereupon "said embedded information [is] provided to allow construction of a viewing record of the broadcast" [271]. The system "extracts and displays content from said broadcast" including content such as broadcast programs, Internet data, etc. (Figure 2; Col 2, Lines 38-55) and further "extract[s]" and "stor[es]" said embedded information" derived from the VBI of said broadcast (Col 4, Lines 28-36). The system further "collect[s] viewer information including a user identifier and information indicative of an amount of the broadcast viewed by the viewer, specific incentives and links to the specific incentives being associated with the amount of the broadcast viewed by the viewer" (Figures 2-4 col. 3 line 46 to col. 4 line 48). Finally, the system "provides specific incentives" or rewards to the "viewer based on said viewing record including information indicative of one or more sponsors of the broadcast" (Col 2, Lines 5-7; Col 3,

Lines 46-50; Col 4, Lines 14-21). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Matheny et al. with other types of programming including "broadcasts without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name. Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

However, the above combination does not specifically teach collecting the viewer information without prompting the user for feedback.

In an analogous art pertaining to the field of television, Williams et al. discloses providing coupons to a network device without prompting the user for feedback (Col 2, Lines 3-20; Col 5, line 63 to Col 6, Line 5). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Matheny et al. and Blackketter et al. using the teachings of Williams et al. for the purpose of gathering user data without interruption.

In regard to claim 2, the "You Should Know Better, Mr. Spielberg" article provides evidence that it is known in the art of television broadcasting to "allow content to be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Matheny et al. discloses a system and method to encourage viewers to pay attention to television programs. The method comprises "receiving a broadcast with information about the broadcast embedded into the broadcast at regular time periods, said information including timestamp each identifying the time slice during which the broadcast is received" (Figures 2-3 Col 4, Lines 28-36 and Col 7, Lines 28-30). The system "extract[s] and display[s] content from said broadcast" (Figure 2 Col 2, Lines 48-55 and Col 2, Lines 39-42) "extract[s] said embedded information from said broadcast" the embedded information is extracted from the VBI (Col 4, Lines 28-

36). Furthermore the system "increment[s] counters for counting time slices during which broadcasting is received" (Figures 2-4 Col 7, Lines 28-30 and Col 3, Lines 46-50) "stor[es] said embedded information" and "send[s] said embedded information, said counter values and viewer information to a remote computer to allow a viewing time to be determined" (Figures 2 and 4 Col 3, Lines 46-66). The system further "collect[s] viewer information including a user identifier and information indicative of an amount of the broadcast viewed by the viewer, specific incentives and links to the specific incentives being associated with the amount of the broadcast viewed by the viewer" (Figures 2-4 col. 3 line 46 to col. 4 line 48). The system then "provid[es] specific incentives to the viewer based on said embedded information including information indicative of one or more sponsors of the broadcast" (Figure 2-4 Col 2, Lines 5-7, Col 3, Lines 46-50 and Col 4, Lines 14-21).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Matheny et al. with other types of programming including "broadcasts without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name. Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

However, the above combination does not specifically teach collecting the viewer information without prompting the user for feedback.

In an analogous art pertaining to the field of television, Williams et al. discloses providing coupons to a network device without prompting the user for feedback (Col 2, Lines 3-20; Col 5, line 63 to Col 6, Line 5). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Matheny et al. and Blackketter et al. using the teachings of Williams et al. for the purpose of gathering user data without interruption.

In regard to claim 3, the "You Should Know Better, Mr. Spielberg" article provides evidence that it is known in the art of television broadcasting to "allow content to

be broadcast without commercial interruption" yet still be sponsored by companies. However, the evidence of the particular species of 'broadcast programming' is silent with respect further providing incentives to viewers to watch.

In an analogous art pertaining to the field of television, Matheny et al. discloses a system and method to encourage viewers to pay attention to television programs. The method comprises "embedding information along with the broadcast content, said embedded information including information that allows viewer information to be determined, the viewer information including information indicative of an amount of the broadcast viewed by a remote viewer, specific incentives and links to the specific incentives being associated with the amount of the broadcast viewed by the viewer" and "broadcasting said content with said embedded information to a remote viewer of the content, the embedded information enabling a remote computer to retain the information indicative of one or more sponsors of the broadcast, and to determine the viewer information further including a user identifier and the information indicative of an amount of the broadcast viewed by the remote viewer, specific incentives being based in part on the amount of the broadcast viewed by the remote viewer " (Figures 3 and 4 Col 4, Lines 21-36, Col 2, Lines 48-55, Col 2, Lines 39-42, Col 2, Lines 5-7 and Col 3, Lines 46-66). The remote computer is 'enabled to retain' by virtue of having received the information autonomously.

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teachings of Matheny et al. with other types of programming including "content without commercial interruption" for the purpose of providing a means to encourage viewers to pay attention to TV programs.

It is unclear from Matheny et al. whether or not the "embedded information includes information indicative of one or more sponsors of the broadcast" such as a sponsor name. Matheny et al. explicitly incorporates by reference US application serial No. 09/345,223 (now US Pat No. 7,103,904)(Col 5, Lines 20-25). Blackketter et al., in conjunction with its usage of advertising templates teaches that it is known in the art for "embedded information" such as triggers to "include information indicative of one or more sponsors of the broadcast" such as the sponsor name (Col 3, Lines 25-30; Col 5, Lines 13-15). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matheny et al. using the teachings of Blackketter et al. for the purpose of providing for customization of interactive content in a manner that conserves bandwidth (Blackketter et al.: Col 3, Lines 7-16).

However, the above combination does not specifically teach collecting the viewer information without prompting the user for feedback.

In an analogous art pertaining to the field of television, Williams et al. discloses providing coupons to a network device without prompting the user for feedback

(Col 2, Lines 3-20; Col 5, line 63 to Col 6, Line 5). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Matheny et al. and Blackketter et al. using the teachings of Williams et al. for the purpose of gathering user data without interruption.

In regard to claim 4, Matheny teaches "obtaining the stored embedded information so as to determine said viewer information" (Col 3, Lines 56-66) and "sending the links to the specific incentives to said viewer based on said viewer information" (Figures 2-4 Col 4, Lines 14-48). Williams teaches "the viewer information being determined without prompted viewer feedback provided by the remote viewer as part of remote viewer participation in an interactive reward program" (Col 2, Lines 3-20; Col 5, line 63 to Col 6, Line 5).

Claims 5-6 and 7-8 are met by that discussed above for claims 2-4.

In regard to claims 9-10, the recited limitations are met by that discussed above for claims 2-4 except the reference fails to explicitly disclose creating a Web page containing links to all sponsor incentive websites and to specific incentives and sending said Web page back to said viewer; however, the applicant's admission of fact provides evidence that it notoriously well know in the art to use a web page so as to facilitate the organization of URLs. Consequently, it would have been obvious to one of ordinary skill in the art to implement Matheny with the use a web page so as to facilitate the organization of URLs.

(10) Response to Argument

1. In response to appellant's argument (Appeal Brief pgs. 16-17) that the combination of the 1997 broadcast of "Schindler's List" with Matheny (US 6,766,524) is improper because Matheny teaches encouraging viewers to watch commercials and Schindler's List does not contain commercials, the examiner respectfully disagrees. Matheny does disclose a system for encouraging users to pay attention to commercials, however, Matheny further discloses the communication system 200 "reward[s] viewers for paying attention to broadcast television commercials and other types of broadcast

programs" (col. 2 lines 38-42). Another type of broadcast television program known to one of ordinary skill in the art at the time of the invention, as shown by Schindler's List, is a commercial free program funded by a sponsor. Therefore, the basis for combining Schindler's List and Matheny is, in fact, found in and supported by the references and not based on hindsight reasoning.

2. In response to appellant's argument (Appeal Brief pgs. 17-20) that the combination of Schindler's List, Matheny, Blacketter (US 7,103,904), and Williams (US 6,075,971) does not disclose a system that provides a reward to a user based on the amount of a program watched without prompting the user for feedback, the examiner respectfully disagrees. Matheny discloses obtaining viewing information and based on the amount of a program viewed providing a reward to the user. Williams discloses two methods for obtaining viewing information and providing rewards based on the viewing information, the first being a survey in which users are prompted for feedback, and the second being a passive monitoring system in which the user is not prompted for feedback (col. 2 lines 3-10; col.5 line 63 to col. 6 line 5). The two viewing information obtaining methods are interchangeable and therefore one of ordinary skill in the art at the time of the invention would have been motivated to replace the "prompting" information collection method of Matheny with the passive information collection method of Williams in order to provide a less intrusive viewing experience.

3. In response to appellant's argument (Appeal Brief pgs. 20-22) that the prompting for viewer feedback is essential to Matheny and modifying Matheny to eliminate the viewer feedback would result in an inoperable system, the examiner respectfully

disagrees. As discussed in section 2 above, Williams discloses substituting prompting a user for feedback with monitoring a user to obtain user behavior and as such the same information is collected, i.e. what the viewer watched, therefore the system of Matheny would still be able to reward viewers for programs watched as that information is available whether collected via prompting or monitoring.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/John Schnurr/

Examiner, Art Unit 2421

Conferees:

/John W. Miller/

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